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THE HON'BLE SRI JUSTICE V.ESWARAIAH

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+ W.P. No.8939 OF 2004

% TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

M. Aswartha Narayana Swamy

.... PETITIONER

Vs.

\$ 1. The Deputy Registrar of Cooperative Societies, Ananthapur,
Ananthapur District.

2. Sodanapalli Primary Agricultural Co-operative Society, Singaramala
Mandal, Ananthapur District, Rep. by its Chairman.

.... RESPONDENTS

! Counsel for Petitioner: Mr. V. SRINIVAS

^ Counsel for Respondent No.1: GP FOR COOPERATION

Counsel for Respondent No.2: Mr. O. MANOHAR REDDY

<GIST:

> HEAD NOTE:

? Cases referred

1. 1994 (2) ALT 39
2. 1988(2) 51(N.R.C)

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NO : 8939 of 2004

Between:

M.Aswartha Narayana Swamy S/o. M.Kondappa
R/o. 13/2-264, Ramachandra Nagar, Ananthapur, Ananthapur District.

..... PETITIONER

AND

1. The Deputy Registrar of Cooperative Societies, Ananthapur, Ananthapur District.
2. Sodanapalli Primary Agricultural Co-operative Society, Singaramala Mandal, Ananthapur District, Rep. by its Chairman.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ order or orders, Direction of Directions to quash the proceedings of the 1st respondent in RC.No.1321/2003-D dated 24-1-2004 by declaring the same as illegal unconstitutional and violative of principles of Natural Justice.

Counsel for the Petitioner: MR. V. SRINIVAS

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: MR. O. MANOHAR REDDY

The Court made the following:

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ORDER:

Petitioner questions the order of the first respondent-Deputy Registrar of Co-operative Societies, Ananthapur, Ananthapur District, dated 24-01-2004, directing for recovery of an amount of

Rs.6,80,061-62 ps. from the petitioner.

2. The petitioner is the Ex-Secretary of the second respondent- Sodanapalli Primary Agricultural Co-operative Society.

3. Sri Vedula Srinivas, learned Counsel appearing for the petitioner, submits that the petitioner was placed under suspension by the second respondent, vide Proceedings dated 29-11-2003, on the ground that during the course of Statutory Audit conducted under Section 50 of the A.P. Cooperative Societies Act, 1964 (for short, 'the Act'), it was found that the petitioner has misappropriated an amount of Rs.6,80,061-62 ps. Pursuant to the said audit report, the first respondent issued notice dated 26-12-2003, under Section 60(1) of the Act, to show cause as to why the said amount shall not be recovered from the petitioner by way of surcharge

proceedings.

4. The case of the petitioner is that he was neither supplied with a copy of the audit report nor was given the findings on the audit objections. It is stated that after receiving the show cause notice, the petitioner filed a representation dated 13-01-2004, seeking time for filing objections. But without considering the said representation, the first respondent passed the impugned order dated 24-01-2004.

5. The learned Counsel appearing for the petitioner contended that even assuming that no explanation has been submitted to the show cause notice, the impugned order passed on 24-01-2004 is against the principles of natural justice, as the first respondent has not independently considered and discussed as to how the amounts are liable to be recovered from the petitioner. In support of his contention, he has relied on a decision of this Court in **S. RAMA SUBBA RAO v. I & P.D. SUB-DIVL. EMPLOYEES CO-OP. CREDIT SOCIETY LTD.**¹, wherein, surcharge order made under Section 60 (1) of the Act, was questioned. Basing on the inspection report under Section 52 of the Act, a show cause notice under Section 60 (1) of the Act was issued for passing surcharge orders, for which an explanation is filed denying the liability, and that after considering the explanation, the Deputy Registrar passed the surcharge order. In the said case, it is held that independent enquiry has to be made under Section 60 of the Act, and the order under Section 60(1) of the Act cannot automatically base on the inspection report made under Section 52 of the Act. The contention that the surcharge order is appealable under Section 76 of the Act was also not accepted, as it is mandatory on the part of the Deputy Registrar to follow the procedure under Section 60 of the Act.

6. The learned counsel for the petitioner also relied on a decision in **PRIMARY AGRICULTURAL CO-OPERATIVE CREDIT SOCIETY LTD., RUDRUR v. V.M. GANGADHAR & OTHERS**², wherein a Division Bench of this Court held that without conducting an enquiry and merely basing on the inspection report and in the absence of any material as to on what basis the inspection officer came to the conclusion, no order could be passed under Section 60 of the Act.

7. It is not in dispute that there was a statutory audit conducted under Section 50 of the Act. Basing on the audit report made under Section 50 of the Act for the year 2002-2003, the first respondent issued surcharge notice under Section 60(1) of the Act dated 26-12-2003, which reads as follows—

“Whereas the statutory of Audit Under Section 50 of APCS Act VII of

1964 into the Financial and Administrative irregularities of Sodanapalli Primary Agriculture Cooperative Society for the year 2002-2003 conducted by the concurrent Senior Inspector Auditor, Anantapur and Group Auditor, Dharmavaram have reported that Sri M. Aswartha Narayana Swamy Secretary of Sodanapalli Primary Agriculture Cooperative Society was found responsible for misappropriation of Society funds amounting to Rs.6,80,061-62 (Rupees Six Lakhs Eighty Thousand and Sixty one and Paise Sixty Two only) and thus caused deficit to the Assets of the Society as detailed below:

S.No.	Particulars of Misappropriation	Amount involved
01.	Loans closed directly in the loan ledger but the amounts not brought to cashbook.	Rs.4,45,185-00
02.	Amounts shown as paid to the members under 'Due to' but not actually paid.	Rs. 14,649-00
03.	Members interest kept under due to without collecting since more than one year.	Rs.1,73,208-00
04.	Exgratia drawn for the year 2001-2002 without approval of the Managing Committee.	Rs. 10,108-00
05.	FTA Drawn by the Secretary.	Rs. 1,000-00
06.	Vehicle Advanced due to be recovered.	Rs. 2,000-00
07.	Arthematical errors in the cash book during 2000-2001.	Rs. 18,515-62ps
08.	Double Expenditure.	Rs. 410-00
09.	Cash balance as on 31-03-1996	Rs. 4,193-00
10.	Exgratia without approval by the Managing Committee.	Rs. 10,793-00
	Total	Rs.6,80,061-62ps

Sri M. Aswartha Narayana Swamy, Secretary, Sodanapalli Primary Agriculture Cooperative Society (Under Suspension) is hereby directed to show cause why the amount of Rs.6,80,061-62 (Rupees Six Lakhs Eighty Thousand and Sixty One and Sixty Two Paise only) should not be recovered from him by issue of surcharge orders under Section 60 of APCS Act 7 of 1964.

He is directed to file his objections if any for the proposed action within 10 days of the receipt of this notice along with recorded evidence in support of his defence failing which suitable surcharge Orders will be issued for recovery of the amount without further notice.

Given under my hand and seal on 26th day of December, 2003.

8. A perusal of the above said notice makes it abundantly clear that all the particulars of misappropriation; amounting to Rs.6,80,061-62 ps., was specifically furnished to the petitioner and the petitioner failed to give any reply to the same, and on the other hand, he never asked either for submission of the audit report or for furnishing of any other particulars, but simply requested time to submit his explanation, by way of representation dated 13-01-2004. As the petitioner failed to submit his explanation to the show cause notice dated 26-12-2003, the first respondent passed the impugned order dated 24-01-2004 for recovery of the said amount. When no explanation was filed to the show cause notice, the question of

conducting enquiry does not arise. The two decisions relied on by the learned counsel for the petitioner are distinguishable on the ground that surcharge proceedings were initiated basing on the inspection report made, under Section 52 of the Act, whereas in the instant case, the surcharge proceedings were initiated basing on the statutory audit report made under Section 50 of the Act, and all the particulars of the misappropriation were also furnished in the notice given under Section 60(1) of the Act. In the absence of any explanation from the petitioner to the show-cause notice, there is no other go for the first respondent, except to pass final orders. Thus, the aforesaid decisions are not applicable to the present case. Since there is a remedy of appeal available to the petitioner against the impugned order under Section 76 of the Act, I do not see any inherent lack of jurisdiction, or any violation of the provisions of Section 60(1) of the Act. However, it is open for the petitioner to avail the alternative remedy of appeal, within a period of two weeks from the date of receipt of a copy of this order, and on filing of such appeal, the appellate authority shall dispose of the appeal, uninfluenced by any of the observations made by this Court in this order.

9. Accordingly, the writ petition is dismissed. No costs.

V. ESWARAI AH, J

Dt.14-09-2004

Glv/Shr

Note: L.R. copy be marked.

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Glv/Shr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copies to:

1. The Deputy Registrar of Cooperative Societies, Ananthapur, Ananthapur District.
2. Two CCs to the Government Pleader for Cooperation, High Court Buildings, Hyderabad. (O.U.T)
3. Two C D copies.